

**Amendment and Response**

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Serial No.: 10/727,459

Confirmation No.: 7102

Filed: 3 December 2003

For: ADJUSTABLE SHELVING SYSTEM

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**Remarks**

The Office Action mailed April 26, 2007 has been received and reviewed. Claims 1-9 have been cancelled and claims 10-29 have been added. Therefore, claims 10-29 are pending. Reconsideration and withdrawal of the rejections are respectfully requested in view of the amendments and remarks provided herein.

**Drawing Objection**

Figure 5 is objected to under 37 C.F.R. § 1.84(h)(5) as showing modified forms of construction in the same view.

Applicant respectfully traverses this objection.

Figure 5 shows two different J-shaped brackets 30 and 30' configured with their pins 34 and 32 lying in the same axis for use in the Adjustable Shelving System to, e.g., mount a shelf on the side rails, as shown by the axis line connecting them. Therefore, Figure 5 does not show modified forms of construction in the same view.

Reconsideration and withdrawal of this objection are respectfully requested.

**Specification Amendment**

In view of the Examiner's comments, the Abstract of the Specification has been amended as provided herein. Entry and consideration of the amendment are respectfully requested.

**Cancelled Claims**

Please cancel claims 1-9 without prejudice.

**New Claims**

Claims 10-29 have been added as provided herein. Support for these new claims may be found in the application as originally filed. *See, e.g.*, Specification, page 1, line 13 to page 2, line 2, page 3, line 11, to page 4, line 8, and page 5, lines 9-26, and Figures 1-5. For example, Figure 3 shows that the pin may be located a distance away from the support arm and in a plane

parallel thereto as recited in claims 15, 22, and 29. Further, for example, Figure 3 shows that the at least one inner surface of the locking bracket may include a first inner surface from which the pin extends and a second inner surface parallel to the first inner surface as recited in claim 16. Still further, for example, Figure 5 shows that an edge of the second inner surface may be angled as recited in claim 17.

Entry and consideration of new claims 10-29 are respectfully requested.

**The 35 U.S.C. § 112, Second Paragraph, Rejection**

The Examiner rejected claims 1-5 and 9 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Applicant respectfully traverses this rejection. Nonetheless, Applicant has cancelled such rejected claims, and in an effort to move the prosecution of this application forward, Applicant respectfully submits that the new claims are not indefinite under 35 U.S.C. § 112, second paragraph.

Reconsideration and withdrawal of this rejection are respectfully requested.

**The 35 U.S.C. § 102 Rejection**

The Examiner rejected claims 1-7 and 9 under 35 U.S.C. § 102 as being anticipated by Wood (U.S. Patent No. 2,191,701).

Applicant respectfully traverses this rejection. Nonetheless, Applicant has cancelled such rejected claims, and in an effort to move the prosecution of this application forward, Applicant respectfully submits that the new claims are not anticipated by Wood.

For a claim to be anticipated under 35 U.S.C. § 102(b), each and every element of the claim must be found in a single prior art reference. *See* M.P.E.P. § 2131. Applicant submits that each and every element of independent claims 10, 19, and 24 are not shown in Wood.

Claim 10 describes an adjustable shelving system including a side rail comprising at least one orifice extending through the side rail from a first side surface thereof to a second side

surface thereof, a support arm extending between a first end and a second end, wherein the second end is attachable to the side rail, a locking bracket at the second end of the support arm comprising at least one inner surface configured to wrap around at least a portion of the side rail when the support arm is attached to the side rail, and a pin extending from the at least one inner surface of the locking bracket orthogonal to the support arm, wherein the pin is sized as a function of the at least one orifice such that it extends through the first side surface and second side surface of the side rail when the support arm is attached to the side rail.

Claim 19 describes an adjustable shelving system including a side rail having four sides, wherein the side rail comprises at least one orifice extending through the side rail from a first side surface of the four sides to a second side surface of the four sides, and wherein the first side surface is opposite the second side surface, a support arm, wherein the support arm extends between a first end and a second end, wherein the second end is attachable to the side rail, a J-shaped bracket at the second end of the support arm comprising at least one inner surface configured to wrap around at least a portion of three sides of the side rail when the support arm is attached to the side rail, wherein the inner surface comprises a first inner surface, a second inner surface extending orthogonally from the first inner surface, and a third inner surface extending orthogonally from the second inner surface and parallel to the first inner surface, and a pin extending from the first inner surface of the J-shaped bracket orthogonal to the support arm, wherein the pin is sized as a function of the at least one orifice such that it extends through the first side surface and second side surface of the side rail when the support arm is attached to the side rail.

Claim 24 describes an adjustable shelving system including a first side rail and a second side rail, wherein each side rail comprises at least one orifice extending through each side rail from a first side surface thereof to a second side surface thereof, a first support arm and a second support arm, wherein each support arm extends between a first end and a second end, wherein the second end is attachable to either the first or the second side rail, a locking bracket at the second end of each of the first and second support arms comprising at least one inner surface configured to wrap around at least a portion of the side rail when the support arm is attached to

the side rail, a pin extending from the at least one inner surface of each of the locking brackets orthogonal to the support arm, wherein the pin is sized as a function of the at least one orifice such that it extends through the first side surface and second side surface of the side rail when the support arm is attached to the side rail, and at least one shelf supported by the first and second support arm.

For example, nothing is identified within the disclosure of Wood that discloses a pin that is sized as a function of the at least one orifice such that it extends through the first side surface and second side surface of the side rail when the support arm is attached to the side rail as recited in claims 10, 19, and 24. Instead, the lugs 19, 25 shown in Wood only extend through a single side surface of the pilaster 10.

For at least the above reasons, independent claims 10, 19, and 24 are not anticipated by Wood. With respect to dependent claims 11-18, 20-23, and 25-29, each of which depends from one of the independent claims 10, 19, and 24, either directly or indirectly, such claims are not anticipated by Wood for the same reasons as presented above for claims 10, 19, and 24. In addition, such dependent claims recite additional elements that further support patentability.

Reconsideration and withdrawal of this rejection are respectfully requested.

### **The 35 U.S.C. § 103 Rejection**

The Examiner rejected claim 8 under 35 U.S.C. § 103 as being unpatentable over Wood.

Applicant respectfully traverses this rejection. Nonetheless, Applicant has cancelled such rejected claim, and in an effort to move the prosecution of this application forward, Applicant respectfully submits that the new claims are patentable over Wood.

To establish a *prima facie* case of obviousness, the prior art references must teach or suggest all the claim limitations. See M.P.E.P. § 2143.

Applicant submits that claims 10-29 are not obvious over Wood for the same reasons as presented above as Wood does not teach or suggest all the claim limitations.

Reconsideration and withdrawal of this rejection are respectfully requested.

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**Double Patenting Rejection**

Claim 3 is objected under 37 C.F.R. §1.75 as being a substantial duplicate of claim 1.

Applicant respectfully traverses this rejection. Nonetheless, Applicant has cancelled claim 3.

Reconsideration and withdrawal of this rejection are respectfully requested.

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**Summary**

It is respectfully submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicant's Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

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18 July 2007  
Date

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**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the paper(s), as described hereinabove, are being transmitted via the U.S. Patent and Trademark Office electronic filing system in accordance with 37 CFR §1.6(a)(4) to the Patent and Trademark Office addressed to the Commissioner for Patents, Mail Stop Amendment, P.O. Box 1450, Alexandria, VA 22313-1450, on this 18th day of July, 2007, at 2:45pm (Central Time).

By:   
Name: Sam E. Wigant

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